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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Tony G. Waldrop
President, University of South Alabama
307 University Boulevard North, Room 130
Mobile, Alabama 36688

University of South Alabama – Public
Funds – Expenditures – Awards – Gifts –
Flowers

The University of South Alabama (“University”) may purchase appreciation gifts, flowers, Christmas cards, retirement cards, plaques, and awards using public funds if the University determines such purchases are in the best interest of the institution and promote the purposes for which the institution was created.

Dear President Waldrop:

This opinion of the Attorney General is issued in response to your request.

QUESTION

May the University of South Alabama purchase appreciation gifts, flowers, Christmas cards, retirement cards, plaques, and awards using public funds?

FACTS AND ANALYSIS

You seek guidance regarding the ability of a public university to expend public funds for the purchase of gifts of appreciation, flowers, Christmas cards, retirement cards, plaques, and awards. You note that in our opinion to Tony Petelos, Commissioner, Department of Human Resources, dated February 17, 1999, A.G. No. 99-00112, this Office determined that the Department of Human Resources did not have legal authority to purchase the aforementioned items with public funds. As a basis for its determination, this Office stated that section 93 of the Constitution of Alabama prohibited the expenditure of public

funds for private purposes by state agencies. This prohibition has been interpreted to extend to public universities. *See, generally*, opinion to Honorable Joe A. Lee, President, Alabama State University, dated April 3, 2007, A.G. No. 2007-064; *also see*, opinion to Honorable V. Gordon Moulton, President, University of South Alabama, dated October 18, 2004, A.G. No. 2005-004.

In 2011, the Supreme Court of Alabama, in reaffirming earlier decisions made by the Court, stated that section 93 of the Recompiled Constitution of Alabama did not apply to public universities because such institutions are public corporations. *Vandenberg v. Aramark Educ. Servs., Inc.*, 81 So. 3d 326 (Ala. 2011). As public corporations, public universities are instrumentalities of the state. *Id.* Based on this decision, you now question whether the University of South Alabama may use public funds to purchase the various gifts and items mentioned, as long as those expenditures serve a University purpose and comply with the rules of the Internal Revenue Service for 501(c)(3) entities.

Because section 93 does not act as a bar to certain actions of the University, whether an expenditure of this nature may be made depends on whether the University has sufficient statutory authority to authorize the expenditure. The University of South Alabama was created pursuant to sections 16-55-1 through 16-55-10 of the Code of Alabama. Sections 16-55-3 and 16-55-4 of the Code set forth the authority of the Board of Trustees of the University. These provisions respectively state as follows:

The Board of Trustees of the University of South Alabama ***shall have all the rights, privileges and authority necessary to promote the purpose of its creation, which is to establish and provide for the maintenance and operation of a state university in Mobile County.*** The board may hold, lease, sell or in any other manner not inconsistent with the object or terms of the grant or grants under which it holds, dispose of any property, real or personal, or any estate or interest therein, as to it may seem best for the purposes of the institution, and sales of property, real or personal, may be made at any time by the trustees.

ALA. CODE § 16-55-3 (2012) (emphasis added).

The board of trustees shall have the power to organize the institution by appointment of instructors and faculty members and such executive and administrative officers and employees as may be necessary to operate the university; the trustees may remove any officers, faculty members or employees of

the institution in their discretion and shall have the power and authority to fix salaries or compensation, increase or reduce the same at their discretion, to regulate, alter or modify the government of the institution as they may consider advisable. The trustees may prescribe courses of instruction, rates of tuition and fees, confer such academic and honorary degrees as are usually conferred by institutions of like character; ***and they may do whatever else they may consider in the best interest of the institution.***

ALA. CODE § 16-55-4 (2012) (emphasis added).

Reading these provisions together, the Board is authorized to take whatever steps it deems necessary to promote the purposes for which the institution was created and any other actions that are in the best interest of the institution. Accordingly, it is the opinion of this Office that the University of South Alabama may purchase various appreciation gifts, plaques, and awards with public funds if the University determines such purchases are within the best interest of the University and promote the purposes for which the University was created.

CONCLUSION

The University of South Alabama may purchase appreciation gifts, flowers, Christmas cards, retirement cards, plaques, and awards using public funds if the University determines such purchases are in the best interest of the institution and promote the purposes for which the institution was created.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division